IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

First Appeal No.674/2004

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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Mr. A.S. Jaiswal, Adv. for the appellant.
Mr. N.B. Kalwaghe, Adv. for respondent no.1.
Mr. N.C. Phadnis, Advocate for respondent no.2

CORAM : A.P. Lavande, J.
Dated : November 14, 2006

Heard Mr. A.S. Jaiswal, Advocate for the appellant, Mr. N.B. Kalwaghe, Advocate for respondent no.1 and Mr. N.C. Phadnis, Advocate for respondent no.2.

Admit.

Mr. N.B. Kalwaghe, Advocate waives notice on behalf of respondent no.1 and Mr. N.C. Phadnis, Advocate waives notice on behalf of respondent no.2.

This appeal has been preferred under Section 39 (1) (vi) of the Indian Arbitration Act, 1940 (hereinafter referred to as “the Act”) challenging the judgment

and order dated 9.7.2004 passed by Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.1214/1992.

Briefly, the facts leading to filing of the present appeal are as under:-

The appellant along with his brother Sunil and wife Veebha jointly known as “Bhandarkar Group” were business partners of respondent no.2 and Veebha Bhandarkar and Sunil Bhandarkar jointly known as “Durugkar Group”. Certain disputes arose between two groups and by mutual consent the disputes were referred to Arunkumar Bhagat and late Advocate A.B. Oka who were appointed as arbitrators. The arbitrators entered upon reference and passed award dated 9.5.1991. The arbitrators held that the appellant along with his brother and wife (Bhandarkar Group) were liable to pay an amount of Rs. 3,75,000/- to Durugkar Group. The Arbitrators filed the award in the Court of Civil Judge, Senior Division, Nagpur for making it rule of the Court. The objections

were filed on behalf of the appellant. During pendency of the said proceedings before the Civil Court, the appellant preferred Civil Revision Application No.1057/1999 against an order passed by the Civil Court on the application rejecting prayer to recast the issues. In the said revision application on behalf of the present appellant, it was also urged that all the parties to the agreement have not been made parties to the proceedings and they were not given notice of passing of award or of filing of the application before the Civil Court. This Court dismissed the said revision application and while doing so held that the Civil Court will have to issue notices to all the parties to the arbitration proceedings and pronounce order after hearing all the parties. Thereafter, the Civil Court issued notices to Veebha Bhandarkar and Sunil Bhandarkar. Veebha Bhandarkar was duly served and Sunil Bhandarkar was also served by substituted service. Both of them did not file objections to the award. The

Civil Court, after hearing the parties, rejected the objections filed by the appellant and ordered that the award be made rule of the Court. The Civil Court also directed Bhandarkar Group to pay to Durugkar Group the interest @ 6% per annum on the amount due under Award from the date of decree till realisation. The appellant by filing the present appeal has challenged the judgment and order passed by the Civil Court making the award the rule of the Court.

I have heard Mr. Jaiswal, Advocate for the appellant and Mr. Phadnis, Advocate for respondent no.2. I have perused the records.

Mr. Jaiswal, learned counsel appearing for the appellant urged that two members of Bhandarkar Group - Veebha and Sunil Bhandarkar were not made parties before the Civil Court after the Arbitrators filed award before the Civil Court for making it rule of the Court. According to Mr. Jaiswal, since Veebha Bhandarkar and

Sunil Bhandarkar were not made parties in the proceedings before the Civil Court, the judgment and order is vitiated inasmuch as both the persons ought to have made parties in the proceedings before the Civil Court and mere giving opportunity to them is not sufficient compliance of Section 14 of the Act. Mr. Jaiswal further submitted that notices were not properly served upon said Sunil Bhandarkar and, therefore, the impugned judgment and award deserves to be quashed and set aside.

Per contra, Mr. Phadnis, Advocate appearing for respondent no.2 submitted that both the members of Bhandarkar Group were duly notified as observed by the trial Court. He further submitted that it was not necessary for the said two persons to be made the parties before the Civil Court after Arbitrators filed the award and although they had knowledge about passing of the award, they did not file any objection to the award. He further submitted that in view of order dated 23.7.2001 passed in

revision preferred by the appellant it was sufficient to give notice of filing of the award to the said persons which has been done pursuant to the order passed by this Court in the said revision application. According to learned counsel, no interference is called for at the instance of the appellant inasmuch as he cannot have the grievance about said two persons being not made parties when the said two persons themselves have not objected to the award.

In order to appreciate the submissions made by learned counsel appearing for the parties, it would be appropriate to quote section 14 of the Act, upon which reliance has been placed by learned counsel for the appellant.

Section 14 of the Act reads as under:-

“Award to be signed and filed – (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the

amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) where the arbitrators or umpire state a special case under clause (b) of Section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award."

A bare perusal of Section 14 reveals that Section 14(2) of the Act

mandates the Court to give notice to the parties of filing of the award. In the present case, admittedly, the appellant was representing Bhandarkar Group pursuant to the authority having been given to each of them by other members of the Group. It is also pertinent to note that this Court while disposing of Civil Revision Application no. 1057/1999 directed the Civil Court to give notices to all the parties and the said order has become final between the parties. Nowhere in the said order this Court directed the Civil Court to make the parties to the Arbitration Agreement as parties in the proceedings before the Civil Court. Therefore, it is clear that in compliance with the order passed by this Court, Civil Court issued notices to Sunil and Veebha who chose not to file any objection to the award. Having regard to this factual ground, I do not find any merit in the submission of Mr. Jaiswal that the impugned judgment and award is vitiated on account of the fact that members of Bhandarkar Group were not

made parties in the proceedings before the Civil Court. The appellant having accepted the order dated 23.7.2001 passed by this Court disposing of Civil Revision Application in which this Court specifically directed the Civil Court to give notices to all the parties, the appellants cannot now be permitted to urge that the judgment and order is vitiated for non-joinder of said persons as parties to the proceedings. Moreover, it is pertinent to note that neither Veebha nor Sunil Bhandarkar has filed objection to the award nor has preferred an appeal against judgment and award passed by the Civil Court making award rule of the Court. This is an additional ground to reject the submission made on behalf of the appellant. I, therefore, find no merit in the submission of Mr. Jaiswal that non-joinder of two members of Durugkar Group is fatal and on this ground the impugned judgment and order is liable to be set aside.

Record of the trial Court discloses that the notice issued by the trial Court was

served on Veebha and Sunil was served by substituted service. Sunil has not made any grievance that the service of notice on him is improper or illegal. The trial Court, therefore, in my opinion, was justified in passing the judgment and order after issuing notices to two members of Durugkar Group as directed by this Court.

For the reasons aforesaid, I do not find any merit in the present appeal. Consequently, the appeal stands dismissed with no order as to costs.

JUDGE

A.